

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

#### **Proposing rule making related to child and spousal support and parenting time and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 99, “Support Establishment and Adjustment Services,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 252B.7A.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 252B.7A.

#### *Purpose and Summary*

This proposed rule making is necessitated by recent changes to 45 CFR Section 302.56 for guidelines for setting child support awards and to 45 CFR Section 303.4 for establishment of support obligations. To conform to these federal regulations, this rule making updates the Child Support Recovery Unit’s current rules for determining income to consider the parent’s specific circumstances when evidence of income is limited. The federal Family Support Act of 1988 required each state to maintain uniform child support guidelines and criteria and to review the guidelines and criteria at least once every four years. The Iowa General Assembly entrusted the Iowa Supreme Court with this responsibility in Iowa Code section 598.21B. These proposed amendments update Chapter 99 to conform to upcoming changes to the Iowa Supreme Court guidelines. This rule making adds the term “parenting time” in reference to the rights awarded a parent to time with the parent’s child. The term “parenting time” is becoming the more preferred terminology, as compared to the term “visitation,” and there has been recent proposed legislation to replace the term throughout the Iowa Code.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on July 6, 2021. Comments should be directed to:

Nancy Freudenberg  
Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

### *Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—99.1(234,252B,252H) as follows:

**441—99.1(234,252B,252H) Income considered.** The child support recovery unit shall consider all regularly recurring income of both legal parents to determine the amount of the support award in accordance with the child support guidelines prescribed by the Iowa Supreme Court. Spousal support shall be considered as specified in the Iowa Supreme Court guidelines, and prior obligation spousal support actually paid or received shall be calculated in the same manner as the deductions for support in subrule 99.2(4). These rules on child support guidelines shall not apply if the child support recovery unit is determining the support amount by a cost-of-living alteration as provided in Iowa Code chapter 252H, subchapter IV.

**99.1(1) to 99.1(3)** No change.

**99.1(4)** *Use of occupational wage rate information or median income for parents on the CSRU caseload.* ~~Occupational~~ CSRU shall use wage rate information or median income for parents on the CSRU caseload shall be used to determine a parent’s income when the parent has failed to return a completed financial statement when requested, and when complete and accurate income information from other readily available sources cannot be secured. If a parent’s most recent residential address is in Iowa, CSRU shall use Iowa workforce development regional data to determine income. If a parent’s most recent residential address is in another state, the District of Columbia, or Puerto Rico, CSRU shall use wage data from the place of the parent’s most recent residence to determine income. For all other cases, CSRU shall use Iowa statewide occupational wage rate or median income for parents on the CSRU caseload to determine income.

*a. Occupation known.* When CSRU can reasonably ascertain the current or last-known occupation of a parent ~~can be determined through a documented source including, but not limited to, Iowa workforce development or the National Directory of New Hires,~~ CSRU shall use occupational wage rate information shall be used to determine income. ~~When the last-known occupation of a parent cannot be determined through a documented source, information may be gathered from the other parent and occupational wage rate information applied.~~ Wage rate information shall be converted to a monthly amount in accordance with subrule 99.3(1).

*b. Occupation unknown.* When CSRU cannot reasonably ascertain the current or last-known occupation of a parent ~~is unknown,~~ CSRU shall estimate ~~determine~~ the income of a parent using

the median income amount for parents on the CSRU caseload, based upon the parent's most recent residential address.

**99.1(5) and 99.1(6)** No change.

ITEM 2. Amend rule 441—99.2(234,252B) as follows:

**441—99.2(234,252B) Allowable deductions.** The deductions specified in the ~~supreme court~~ Iowa Supreme Court child support guidelines shall be allowed when determining the amount of income subject to application of the guidelines. The parent claiming the deduction shall provide the documentation necessary for computing allowable deductions. Allowable deductions are:

**99.2(1) to 99.2(3)** No change.

**99.2(4)** Actual payments of child ~~and spousal~~ support pursuant to a prior court or administrative order. The date of the original court or administrative order, rather than the date of any modifications, shall establish a prior order under this subrule. Support paid under an order established subsequent to the order being modified shall not be deducted. All support payments shall be verified before being allowed as a deduction. The child support recovery unit shall calculate deductions for support as follows:

*a. to d.* No change.

**99.2(5)** ~~Actual medical support paid pursuant to a court order or administrative order in another order~~ Health insurance premium costs for other children, not in the pending matter, as specified in the Iowa Supreme Court guidelines. ~~All medical support payments~~ Health insurance premium costs shall be verified before being allowed as a deduction ~~and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).~~

**99.2(6)** Actual child care expenses ~~during the custodial parent's employment, less the applicable federal income tax credit~~ as specified in the Iowa Supreme Court guidelines. The child support recovery unit shall determine the amount of the child care deduction as follows:

*a.* Actual child care expenses ~~related to the custodial parent's employment~~ shall be verified by a copy of the custodial parent's federal or state income tax return or by a signed statement from the person or agency providing the child care.

*b.* No change.

*c.* In determining the deduction allowed to the custodial parent for child care expenses ~~due to employment,~~ the following procedures shall be used:

(1) and (2) No change.

*d.* No change.

**99.2(7)** Qualified additional dependent deduction (QADD). The qualified additional dependent deduction is the amount specified in the ~~supreme court~~ Iowa Supreme Court guidelines as a deduction for any child for whom parental responsibility has been legally established as defined by the child support guidelines. However, this deduction may not be used for a child for whom the parent may be eligible to take a deduction under subrule 99.2(4).

*a. and b.* No change.

**99.2(8)** Cash medical support, either ordered in the pending matter or for other children, not in the pending matter, as specified in the Iowa Supreme Court guidelines. All cash medical support payments for other children, not in the pending matter, shall be verified before being allowed as a deduction and shall be calculated in the same manner as the deductions for support in subrule 99.2(4).

ITEM 3. Amend subrule 99.4(5) as follows:

**99.4(5)** ~~Extraordinary visitation adjustment~~ Adjustment for extraordinary visitation or parenting time. ~~The CSRU shall calculate an extraordinary visitation adjustment is a~~ or parenting time credit as specified in the ~~supreme court~~ Iowa Supreme Court guidelines. The credit shall not reduce the child support below the amount required by the ~~supreme court~~ Iowa Supreme Court guidelines.

The extraordinary visitation adjustment or parenting time credit shall be given if all of the following apply:

*a.* There is an existing order for the noncustodial parent that meets the criteria for extraordinary visitation or parenting time in excess of 127 overnights per year on an annual basis for the child for

whom support is sought. The order granting visitation or parenting time can be a different order than the child support order. If a controlling order is determined pursuant to Iowa Code chapter 252K and that controlling support order does not meet the criteria for extraordinary visitation or parenting time, there is another order that meets the criteria.

- b. The noncustodial parent has provided CSRU with a file-stamped or certified copy of the order.
- c. The court has not ordered equally shared physical care.

ITEM 4. Amend subrule 99.69(4) as follows:

**99.69(4)** The request is based entirely on issues such as custody, ~~or~~ visitation, or parenting time rights, which are not directly related to child support.

ITEM 5. Amend paragraph **99.85(1)“d”** as follows:

d. The unit may also use ~~the most recent~~ occupational wage rate information ~~published by the department of workforce development~~ or the median income for parents on the unit caseload to ~~estimate~~ determine the net-earned gross income of a parent when a parent has failed to return a completed financial statement when requested and complete and accurate information is not readily available from other sources.

ITEM 6. Amend subrule 99.91(1) as follows:

**99.91(1)** *Nonsupport issues*. The request is based entirely on issues such as custody, ~~or~~ visitation, or parenting time rights.

ITEM 7. Amend paragraph **99.109(2)“b”** as follows:

b. If an order exists that contains language regarding legal custody, physical care, visitation, ~~or~~ parenting time for the child, the unit shall deny the suspension request.